

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4593 of 1999
with
SPECIAL CIVIL APPLICATION No 5977 of 1999
with
SPECIAL CIVIL APPLICATION No 3885 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RABARI JITENDRAKUMAR ARJANBHAI

Versus

DEAN

Appearance:

MR TUSHAR MEHTA for Petitioner
MR PK SHUKLA, AGP for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
Date of decision: 20/09/1999

COMMON ORAL JUDGEMENT

In these petitions under Article 226 of the
Constitution, the petitioners are challenging the
decision of respondent No. 2-Mamlatdar, Talala (Gir), in
Dist. Junagadh refusing to grant the certificate that

the petitioners belong to a Scheduled Tribe as per the notification dated 29.10.1956 of the President of India under Article 342 of the Constitution. The controversy has arisen as the concerned students have passed the Higher Secondary Examination in Science Stream and have applied for admission to medical colleges in the State on the seats reserved for Scheduled Tribe students.

2. The petitioner in Special Civil Application No. 4593 of 199 has contended that his father Bharai Arjanbhai Kanabhai was given the certificate dated 4.7.1995 (No. 006138) by the Deputy Director of Tribal Development, Gujarat State to the effect that the petitioner's father belongs to the Rabari Community of Khakhra Nesh which is a Scheduled Tribe and that, therefore, the Mamlatdar was required to issue the certificate to the effect that the petitioner also belongs to a Scheduled Tribe for the purpose of enabling the petitioner to get the admission to the First Year MBBS Course on the seat reserved for Scheduled Tribe candidates. While admitting the petition on 30.6.1999, this Court granted interim relief directing the respondents to consider the petitioner's candidature provisionally for admission to the MBBS course against seats reserved for Scheduled Tribe candidates, subject to adjudication of the issue at the final hearing.

3. Similarly in Special Civil Application No. 5977 of 1999, petitioner Rekha Nathabhai Sambada has contended that her grand-father Goganbhai Sambada was given the certificate dated 4.1.1996 (No. 014816) by the Deputy Director of Tribal Development, Gujarat State that Goganbhai Sambada belongs to a Scheduled Tribe.

4. The petitioner in Special Civil Application No. 3885 of 1999 is the father of Suresh Bhupatbhai Karmata who has recently passed the Higher Secondary Science Stream examination and is seeking admission to Medical/Engineering colleges on the seats reserved for Scheduled Tribe candidate. The petitioner himself i.e. the student's father is serving as a Telephone Operator at Keshod in Junagadh District. The petitioner has also relied on the Vigat Darshak Card No. 006392 dated 9.10.1995 issued by the Deputy Director, Tribal Development certifying that petitioner Bhupatbhai Najabhai Karmata belongs to a Scheduled Tribe.

5. It is submitted that all the aforesaid certificates were issued by Mr JM Malkan, Deputy Director of Tribal Development after making factual inquiries as per the Government Resolution dated 28.1.1993 (Annexure

F-Page 35) wherein it was specifically mentioned that the persons belonging to the Rabari community residing in the Gir forest were facing number of difficulties for getting certificates of their status as members of a Scheduled Tribe. After considering the said representation, the State Government had appointed Mr JM Malkan, Deputy Director of Social Welfare to undertake this factual inquiry and to submit his report as to which particular persons were belonging to the Rabari community in Gir forest classified as a Scheduled Tribe at Sr.No. 24 (Part IV Gujarat) of the Presidential Notification dated 29.10.1956. Accordingly, the said Deputy Director had submitted his report and had also issued specific certificates in favour of different individuals which were called "Vigat Darshak Cards". The attested true photostat copies of the said certificates are also produced on the record of the respective petitions.

6. However, the Mamlatdar has refused to act upon the aforesaid certificates on the ground that as per the Government letter dated 9.8.1994 written by the Deputy Secretary, Tribal Development Department to the Collector, Junagadh merely because a person's name was mentioned in the Vigat Darshak Card issued by the Deputy Director of Tribal Development, it did not mean that he was entitled to get the certificate from the Mamlatdar and that the Mamlatdar was entitled to ask for particulars and evidence before granting certificate in each individual case. Reference is also made to the instructions issued by the Government of India as to how such certificates are to be issued. It is, therefore, submitted by Mr PK Shukla, learned AGP that the Mamlatdar was justified in insisting for further evidence over and above the Vigat Darshak Patrak issued by the Deputy Director of Tribal Development.

7. It appears that the controversy has arisen on account of the fact that the Rabaris in the Gir forest who were residing in that locality on the date of issuance of the Presidential Notification under Article 342 of the Constitution on 29.10.1956 admittedly belonged to Scheduled Tribe, but on account of the migrations, the controversy kept arising as to whether they and their children could be considered to be belonging to the Scheduled Tribe even after migration. Hence, by the circular letter dated 22.3.1977 (Annexure "C" Page 46), the Government of India clarified that in case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Schedule Tribes

status, is the place of permanent abode of their parents at the time of the notification of the Presidential Order. It was clarified that the residence has not to be understood in the literal or ordinary sense of the word but it connotes the permanent residence of a person on the date of the notification of the Presidential order scheduling his caste/tribe in relation to that locality. Thus, a person who is temporarily away from his permanent place of abode at the time of the notification of the Presidential Order, say, for example, to earn a living or seek education etc. can also be regarded as a Scheduled Tribe if his tribe has been specified in that order in relation to his State.

8. A bare perusal of the aforesaid circular letter clearly shows that in the instant case the Mamlatdar could not have insisted that the certificate cannot be issued if the petitioner or his parents are not able to satisfy that on 29.10.1956 they were residing in the Gir forest. It is pointed out that the father of the petitioner in Special Civil Application No. 5977 of 1999 is serving as a teacher in Junagadh District and the father of the petitioner in Special Civil Application No. 4593 of 1999 is working as a driver in a private luxury bus service. Similarly in Special Civil Application No. 3885 of 1999, the petitioner seeking the certificate for his son is serving as a telephone operator at Keshod in Junagadh District. Hence, merely because the fathers of the respective petitioners are not residing in Gir forest, it would not mean that these persons do not belong to the Scheduled Tribe in question. In fact, looking to the purpose for which Mr JM Malkan, Deputy Director of Tribal Development was appointed as per the Government Resolution dated 28.1.1993 (Annexure "B"), it can be said that the entire exercise was undertaken to ensure that the persons belonging to Scheduled Tribes who are entitled to get the benefits under the various resolutions of the Government, are not deprived of the benefits and every time they are not subjected to undergo this kind of factual inquiry. The factual inquiry was, therefore, already undertaken earlier through Mr JM Malkan, Deputy Director of Tribal Development and in view of the said certificates and in view of the aforesaid letter dated 22.3.1997 issued by the Government of India, the holders of the certificates issued by the Deputy Director of Tribal Development were required to be treated as members of the Scheduled Tribe in question.

9. As far as the relationship of the concerned students with the respective certificate holders is

concerned, the same is not challenged by the respondents though a contention is raised that by Government Resolution dated 29.2.1996 the word "ancestors" has been substituted by the word "parents" and, therefore, the benefit of the Scheduled Tribe certificate cannot be given to the petitioner of Special Civil Application No. 5977 of 1999 as a certificate is issued in favour of her grand-father and not her father. As far as the defence raised by the respondent-State Government is concerned, it is necessary to refer to the relevant extract of the Presidential order which reads as under :-

"Part IV Gujarat

Item No. 24 Rabari (in the Nesses of the forests of Alech, Barada and Gir)."

All these nesses are in the forests in Junagadh District.

10. The contention of Mr Mehta is that the Presidential Notification does not limit the operation of this declaration to only the children of the Rabaris who were residing in those forests and that when the Government has given the benefits to children of the Rabaris who were residing in the nesses as on 29.10.1956, there is no reason to deny the benefit to the grand children of the Rabaris who were residing in the nesses on 29.10.1956. While this contention of Mr Mehta has some substance, at the same time it cannot be said that the Government can never draw a line as to when the persons may be deemed to have shifted their residence permanently. Whether the persons who were originally residing as Rabaris in the aforesaid nesses on 29.10.1956 had permanently migrated or not can perhaps be decided with reference to the number of generations which are away from the nesses. It would be reasonable to presume that even if the rabaris might have migrated for earning living and, therefore, might not be residing in the nesses after 29.10.1956, they might come back to the locality after their retirement and so also their children and the grand children may also come back. There is no reason for limiting the benefits of this declaration only to the second generation i.e. the children. Of course, it can not also be unlimited, but at the same time it appears that the benefit can be extended to two generations i.e. Rabaris who were residing in the nesses on 29.10.1956 and to their children who might be away for the purpose of earning living and their grand children who may be away for the purpose of education.

11. In view of the above, all the three petitions are allowed and the respondents are directed to treat the petitioners as belonging to a Scheduled Tribe at Sr.No. 24 of Part IV of the Presidential Declaration under Article 342 of the Constitution as contained in the Notification dated 29.10.1956.

12. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

Direct Service is permitted.

September 20, 1999 (M.S. Shah, J.)
sundar/-